

Trust Water Right Agreement

This Trust Water Right Agreement is made and entered into as of the 18th day of April, 2016, by and between the Washington State Department of Ecology, State Trust Water Right Program ("Ecology") and Crown Columbia Water Resources, LLC, a Delaware limited liability company. ("Crown").

Whereas, Ecology is the trustee of the Trust Water Rights Program as authorized under Chapter 90.42 RCW (the "Trust") and is authorized to utilize such rights for mitigation to provide a new source of water rights for third parties; and

Whereas, Crown is the owner of certain rights to water from the main stem of the Columbia River and its tributaries and expects to acquire more water rights associated with those water bodies in the future; and

Whereas, Crown shall submit a Trust Water Right Application ("Trust Application") to Ecology for each water right that it wants to be placed into the Trust for the purpose of enhancing in-stream flows and providing mitigation to offset and allow for the permitting of new water rights to be used for any lawful purpose within the Columbia River Basin for which there is adequate mitigation; and

Whereas, Ecology will accept and process such Trust Applications and, for each Trust Application, will perform a tentative determination of the extent and validity of the water right and will issue a decision and its report of examination ("ROE") and, if the application is approved, a Trust Water Certificate (the "Certificate") which will include a quantification of the maximum valid consumptive quantity of water associated with the right; and

Whereas, subject to the terms of this Agreement, and in the ROE for any specific water right, Ecology confirms that it is willing, able and authorized to hold water rights in the Trust as provided for herein;

Now, therefore, in consideration of the foregoing, the mutual covenants and undertakings as hereinafter set forth, and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto hereby agree as follows:

1. The purpose of this Agreement and the primary reason Crown is willing to place water rights into the Trust is to provide a water right as off-setting mitigation that will allow Crown or third parties to apply for and receive new ground water withdrawal or surface water diversion permits, or determinations of water budget neutrality associated with new permit-exempt groundwater uses ("WBNDs") within the Columbia River Basin. The impacts from new water uses authorized by such new permits and WBNDs will be mitigated by way of a designation of such portion of Crown's beneficial interest in the water right(s) in Trust as reasonably required to offset impacts to other water rights and instream flows.

2. This Agreement shall be effective upon its mutual execution, and the Trust shall commence upon Ecology's acceptance of the first water right into Trust, the expiration of all related appeal periods and the resolution of any appeal, and the recording of a deed or other notice to title reflecting said acceptance.

3. Once this agreement is executed, Crown and Ecology may begin the process of designating parties to receive mitigation credit based upon the water rights held in the Trust. The process for Crown to identify recipients of mitigation credit, and for Ecology to issue mitigated permits or WBNDs shall be as follows:

3.1 In the event Crown shall propose or enter into a contract with a third party to provide a portion of a water right in Trust as mitigation on such terms consistent with this Agreement as Crown may elect, Crown or such third party shall make application to Ecology for a WBND ("WBND Application"), or for a new permit to appropriate surface or groundwater at the desired location and for the intended use and quantities, together with all regularly required supporting information (hereinafter a "New Permit Application"). Crown will also co-sign the WBND Application or New Permit Application.

3.2 Upon receipt of a complete New Permit Application Ecology shall accept and process the application utilizing such portion of a water right in Trust as is needed to offset the impacts of such new withdrawal or diversion on other existing water rights and instream flows.

3.3. Ecology will prepare a public notice and send it to the applicant for publication in a newspaper with general circulation in the area as required by RCW 90.03.280.

3.4. The applicant must publish the notice and ensure that the newspaper transmits an affidavit of publication to Ecology.

3.5. Ecology will process the New Permit Application and prepare a report of examination ("New Permit ROE") recommending issuance or denial of a permit, and a decision either approving or denying the New Permit Application, based on applicable law, rules, and policies. Ecology's review of New Permit Applications shall also include the following considerations:

3.5.1 In order to develop and confirm performance standards as set forth in any respective report of examination, Crown and/or such third party shall provide information to reasonably show or estimate, as the case may be, that the consumptive uses of the proposed project, when offset by the mitigation water allocated from the Trust and any other proposed mitigation measures, will offset all impacts to other existing water rights, and instream flows. Ecology may, at its discretion, use the applicant's consumptive use calculations or rely on its own methodology. In this regard and during the consideration of initial New Permit Applications, Ecology may limit the allocation of the quantities of, in the aggregate, to not more than fifty (50%) percent of the total consumptive use water of the water right(s) in Trust in order to obtain data on actual consumptive use by projects for which New Permit Applications are approved; provided, however, that such limitation shall no longer apply once actual consumptive use has been established with respect to twenty-five (25%) of the Water allocated to New Applications.

3.5.2 With regard to domestic uses and so long as new appropriations are metered to users; and the subject project is, or will be made, subject to covenants, conditions and restrictions which impose water use restrictions for both inside and outside purposes which will be recorded against the project; and reasonable water use enforcement provisions are provided; and return flows are provided for through an approved septic or other waste treatment facility reasonably designed to infiltrate treated water in the general area from which it is being withdrawn, the allocation of water from the Trust for mitigation

shall support a rate of not more than 0.392 acre-feet (350 gallons per day on a year round basis) per equivalent residential unit ("ERU"). This ERU rate is expected to support the interior domestic uses of a single family residence and no more than 2500 square feet of exterior irrigation.

3.6. Ecology's New Permit ROE and permit will specify the conditions and limitations on the use of water in a manner consistent with the water rights held in the Trust as mitigation. Conditions relating to measuring and reporting water use will also be included in the permit. Said documents shall also specify the quantity of water from the Trust for mitigation that is obligated by the decision to provide mitigation to offset impacts that the new water use would otherwise cause to existing water rights, and instream flows.

4. Crown shall have the right at any time to withdraw the New Permit Application, terminate this Agreement and remove from the Trust any portion of the Water that has not been permanently allocated for mitigation to enable the issuance of New Permits or WBNDs as set forth in this Agreement. Ecology shall have the right at any time to terminate this Agreement. In the event that this Agreement is voluntarily terminated by either party the provisions of section 8.2 and its subparts shall be utilized.

5. In the event Ecology prepares to issue a New Permit ROE in its evaluation of a New Permit Application, it will publish a draft version of the New Permit ROE on its internet site pursuant to Ecology policy and notify the applicants that it has been posted. When Ecology determines that the final decision is ready then Ecology shall issue the final New Permit ROE. In the event that the decision is appealed the applicant may confess judgment in the appeal and request that the decision be withdrawn and, if such a request is made, Ecology shall do so. In the event that the New Permit decision is overturned on appeal and the New Permit is not issued, then the quantity of mitigation value proportionate to the quantity of water made unavailable to the applicant as the result of the appeal shall no longer be obligated by the Permit.

6. In its capacity as a fiduciary, Ecology shall hold and manage the water rights in Trust pursuant to chapter 90.42 RCW and this Agreement. Ecology:

6.1 Shall take no position and make no assertions that the extent and validity of each water right is other than as stated in the Trust

Application decision documents and paragraph 3 above, for up to five years, and this representation shall also apply to any water removed from the Trust for up to five years;

6.2 Shall process all New Applications where portions of the water right(s) in Trust is proposed as mitigation and shall take all steps necessary to comply with any restrictions imposed by other agreements to which Ecology may be subject, including, but not limited to memorandums of agreement and groundwater moratoriums or subsequently enacted water right processing rules; and

6.3 Shall not assess or charge Crown any costs or fees for maintaining the water right(s) in the Trust; provided that Ecology may charge Crown or third parties its regular costs and fees for processing water right applications.

7. In keeping with the purpose of this Agreement and as a material part of the consideration for this Agreement upon which its execution is dependent:

7.1 Crown makes the following undertakings, representations and warranties to Ecology:

7.1.1 Crown is a Delaware limited liability corporation duly formed and authorized and fully able to enter into and perform all its obligations in this Agreement according to its terms.

7.1.2 Each individual executing this Agreement on behalf of Crown is duly authorized to execute and deliver this Agreement.

7.1.3 Upon its full execution, this Agreement is binding upon Crown in accordance with its terms.

7.1.4 Crown shall use its best efforts to fully and timely perform its obligations and actions contemplated by this Agreement.

7.2 Ecology makes the following undertakings, representations and warranties to Crown:

7.2.1 Ecology is a division of the State of Washington duly formed and authorized and fully able to enter into and perform all its obligations in this Agreement according to its terms.

7.2.2 Each individual executing this Agreement on behalf of Ecology is duly authorized to execute and deliver this Agreement.

7.2.3 Upon its full execution, this Agreement is binding upon Ecology in accordance with its terms.

7.2.4 Ecology shall use its best efforts to fully and timely perform its obligations and actions contemplated by this Agreement.

8. If either party defaults in its obligations under this Agreement; or if this Agreement, or a material portion thereof, be declared illegal or unenforceable; or, either party, through no fault or action by such party, should be incapable or prevented from performing any material obligations or actions, the non-defaulting party in the event of a default or either party in any other event shall have the right to the following:

8.1 As the computation of damages may be difficult, continue this Agreement and bring an action to specifically perform this Agreement.

8.2 Declare the Agreement null and void, whereupon the parties shall cooperate to end the trust water right relationship in an orderly manner as follows:

8.2.1 Crown shall identify all in-process designation agreements and inform Ecology of their status. Crown shall not make representations regarding in-process designations and shall in each instance work with Ecology to determine whether an assignment should be completed. If Ecology agrees, the permit process will be completed promptly in accordance with applicable policies, rules, and law.

8.2.2 Ecology shall promptly convey to Crown or its designee the portion of the trust water right not yet designated and assigned as mitigation for individual groundwater and surface water permits, to include WBNDs. If any reserve has been set aside to address uncertainty (see paragraph 3.6) associated with the then-existing mitigated permits, Ecology will retain such reserve until it is either

assigned to individual permits or Ecology determines some or all of the reserve is unnecessary. Any reserve not needed shall be promptly conveyed by Ecology to Crown.

8.2.3 Each party shall be responsible for their own costs associated with ending the trust water right relationship in an orderly manner.

8.3 Pursue any other remedy now or hereafter available.

8.4 In no event shall the termination of this Agreement alter or affect any water right(s) in the Trust previously allocated for mitigation or permits granted based on the approval of New Permit Applications.

9. This Agreement may be assigned by Crown upon the giving of written notice to Ecology. This Agreement is binding upon and inures to the benefit of the parties to the Agreement as well as upon and to the benefit of their respective heirs, personal representatives, assigns and other successors in interest.

10. Any notice or communication required by this Agreement between Crown and Ecology shall be given to the addresses set forth below:

To Ecology:
Operations Manager, Office of Columbia River
Washington Department of Ecology
Central Regional Office
15 West Yakima Avenue, Suite 200
Yakima, Washington 98902-3452

To Crown:
c/o Crown West Realty, LLC
Spokane Business and Industrial Park
3808 N. Sullivan Rd.
Spokane Valley, WA 99216
Phone (509) 924-1720

And copy to:
Frank J. Walter, Jr.
Petrus Partners, Ltd.
1350 Ave of the Americas

Suite 3000
New York, NY 10019
Phone: (212) 977-3000

11. No provision of this Agreement is severable from any and all other provisions of this Agreement. Should any provision of this Agreement be unenforceable for any reason outside the control of the parties and subject to the provisions of Paragraph 9.2, the party finding itself unable to enforce the provision may, at its sole discretion, declare this entire Agreement to be null and void.

12. If either party fails to exercise its rights under this Agreement, it will not be precluded from subsequent exercise of its rights under this Agreement. A failure to exercise rights will not constitute a waiver of any other rights under this Agreement, unless stated in a letter signed by an authorized representative of the party and attached to the original Agreement.

13. Amendments to this Agreement must be in writing and signed by an authorized representative of each of the parties.

14. Each party shall protect, defend, indemnify, and hold the other harmless from and against third party claims that arise from their respective acts and/or omissions related to this Agreement.

15. This Agreement will be governed and enforced under the laws of the State of Washington. Venue for any action arising under or related to this agreement shall be in Thurston County, Washington.

This Agreement is executed as of the date first above written.

Ecology:

 3/30/16
For Washington State Department of Ecology

Crown:

 4/18/2016
Authorized Representative of Crown Columbia Water Resources, LLC.